

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1152 be amended to read as follows:

- 1 Page 1, line 12, delete "Hearing aids, telephone" and insert
- 2 **"Telephone"**.
- 3 Page 1, line 14, after "that" insert **"are designed to"**.
- 4 Page 2, line 2, after "devices" insert **"that are"**.
- 5 Page 2, line 10, after "nonconformity" insert **"and with obtaining**
- 6 **an alternative assistive device"**.
- 7 Page 2, line 10, delete "and" and insert **". The term does not**
- 8 **include"**.
- 9 Page 2, line 10, after "of" delete "obtaining".
- 10 Page 6, after line 39, begin a new paragraph and insert:
- 11 **"SECTION 2. IC 24-5-21 IS ADDED TO THE INDIANA CODE**
- 12 **AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE**
- 13 **JULY 1, 1999]:**
- 14 **Chapter 21. Hearing Aid Protection**
- 15 **Sec. 1. As used in this chapter, "collateral costs" means**
- 16 **expenses incurred by a consumer in connection with the repair of**
- 17 **a nonconformity and with obtaining an alternative hearing aid,**
- 18 **including taxes. The term does not include the cost of an alternative**
- 19 **hearing aid or professional fitting and dispensing fees.**
- 20 **Sec. 2. As used in this chapter, "consumer" means any of the**
- 21 **following:**
- 22 **(1) An individual who purchases a hearing aid if the hearing**
- 23 **aid was purchased from a dealer or manufacturer for**
- 24 **purposes other than resale.**

(2) If the transfer occurs before the expiration of an express warranty of the hearing aid, an individual to whom the hearing aid is transferred for purposes other than resale.

(3) A person who may enforce a warranty.

(4) An individual who leases a hearing aid from a lessor under a written lease.

Sec. 3. As used in this chapter, "dealer" means a person who is in the business of selling or dispensing hearing aids.

Sec. 4. As used in this chapter, "demonstrator" means a hearing aid used primarily for the purpose of demonstration or loan to a consumer.

Sec. 5. As used in this chapter, "early termination cost" means an expense or obligation that a lessor incurs as a result of:

(1) the termination of a written lease before the termination date set forth in the lease; and

(2) the return of a hearing aid to the manufacturer.

The term includes penalties for prepayment under a finance arrangement.

Sec. 6. As used in this chapter, "early termination savings" means:

(1) an expense or obligation that a lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a hearing aid to a manufacturer, including any interest the lessor would have paid to finance the hearing aid; or

(2) if a lessor does not finance a hearing aid, the difference between the value of the hearing aid over the total period of a lease term remaining after an early termination and the present value of that amount at the date of the early termination.

Sec. 7. As used in this chapter, "express warranty" means a warranty that may not be terminated less than:

(1) one hundred and eighty (180) days after the first delivery of the hearing aid to the consumer for a hearing aid that has a retail value of at least one hundred dollars (\$100) but less than five hundred dollars (\$500) at the time of purchase; or

(2) one (1) year after the first delivery of the hearing aid to the consumer for the hearing aid that has a retail value of at least five hundred dollars (\$500).

Sec. 8. As used in this chapter, "individual" means an individual who:

(1) has a physical or mental impairment that substantially limits at least one (1) major life activity (as defined in 29 USC(9)(B);

(2) has a record of the impairment; and

(3) is regarded as having the impairment.

1 **Sec. 9.** As used in this chapter, "lessor" means a person who:
2 (1) leases hearing aids to consumers; or
3 (2) holds the rights of a person described in subdivision (1);
4 under a written lease.

5 **Sec. 10.** As used in this chapter, "manufacturer" means a
6 person or a person's agent that manufactures or assembles hearing
7 aids, including an importer, a distributor, a factory branch, a
8 distributor branch, and the warrantors of the manufacturer's
9 hearing aid. The term does not include a dealer or lessor.

10 **Sec. 11.** As used in this chapter, "nonconforming hearing aid"
11 means, with respect to a new hearing aid, any of the following,
12 occurring within the term of an express warranty applicable to a
13 new hearing aid:

14 (1) The manufacturer, the lessor, or a manufacturer's
15 authorized dealer makes a reasonable attempt to repair a
16 new hearing aid at least two (2) times for the same
17 nonconformity.

18 (2) A hearing aid in the consumer's possession is out of
19 service for an aggregate of at least thirty (30) days because
20 of a nonconformity.

21 **Sec. 12. (a)** As used in this chapter, "nonconformity" means a
22 broken or missing part, generic defect, malfunction, or a
23 concurrent combination of defects or malfunctions that:

24 (1) substantially impairs the use, value, or safety of a hearing
25 aid; or

26 (2) renders the hearing aid nonconforming to the terms of an
27 express warranty.

28 **(b)** The term does not include a hearing aid that:

29 (1) needs only adjustment, modification, or upgrade;

30 (2) must be adjusted due to an exacerbation in the condition
31 of an individual with a disability or to improve the fit of the
32 hearing aid;

33 (3) must be cleaned;

34 (4) needs routine maintenance;

35 (5) has a condition or defect that is the result of normal use,
36 including accumulation of ear wax, perspiration, or
37 moisture; or

38 (6) has a condition or defect that is the result of abuse,
39 neglect, misuse, or unauthorized modification or alteration
40 of the hearing aid.

41 **Sec. 13. (a)** A manufacturer who sells a hearing aid to a
42 consumer, either directly or through a dealer or lessor, shall
43 furnish the consumer with an express warranty for the hearing aid.
44 If a manufacturer fails to furnish an express warranty, the hearing
45 aid is considered to be covered by an express warranty, as if the
46 manufacturer had furnished an express warranty to the consumer

as required by this section.

(b) The effective period of an express warranty for a hearing aid does not begin until the consumer first takes possession of the hearing aid.

Sec. 14. (a) The express warranty for a hearing aid must require the following if the new hearing aid becomes a nonconforming hearing aid and is not repaired after reasonable attempts (as described in section 11(1) of this chapter) have been made to repair the device:

(1) To receive a refund, the consumer must return the hearing aid to the dealer or manufacturer after which:

(A) if the hearing aid was purchased, the manufacturer shall refund to the consumer the full purchase price plus any finance charge or tax paid by the consumer at the point of sale plus collateral costs, less a reasonable allowance for use; or

(B) if the hearing aid was leased, the manufacturer shall refund to the lessor the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

A dealer or lessor shall reimburse the manufacturer for the amount the manufacturer pays to a consumer that exceeds the net price received by the manufacturer for the hearing aid, less any professional fitting and dispensing charges.

(2) To receive a comparable new hearing aid, the consumer must request that the manufacturer provide the comparable new hearing aid. Not more than thirty (30) days after the return, excluding scheduling time for professional fitting and dispensing of not more than fifteen (15) business days unless modified by mutual agreement, the manufacturer shall provide the consumer with the comparable new hearing aid. When the manufacturer provides the new hearing aid, the consumer shall return the nonconforming hearing aid to the dealer or manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(3) To have the nonconforming hearing aid repaired, the consumer must report the nonconformity to the manufacturer, the lessor, or a manufacturer's authorized dealer and make the hearing aid available for repair before the express warranty expires. The manufacturer, lessor, or dealer to which the hearing aid is made available for repair must make a reasonable attempt to repair or to obtain repairs of the nonconformity at no charge to the consumer.

(b) For purposes of this section, the current value of the written lease equals the total amount of the consumer's obligations

under the lease during the period of the lease remaining after its early termination plus the dealer's early termination costs and the value of the hearing aid at the lease expiration date if the lease sets forth an expiration date value, less the lessor's early termination savings.

(c) A reasonable allowance for use must be calculated by using the depreciation strategy defined in the federal Office of Management and Budget's Circular A-87 (34 CFR 74-76, 34 CFR 79-82, and 34 CFR 85-86) to determine the current value of the used hearing aid.

(d) A person may not enforce a lease against a consumer after the consumer receives a refund.

Sec. 15. A nonconforming hearing aid returned by a consumer or lessor may not be sold or leased again unless full disclosure of the reason for its return is made to a prospective buyer or lessee.

Sec. 16. (a) This section applies if:

(1) a hearing aid covered by a manufacturer's express warranty is tendered by a consumer to the dealer, manufacturer, or lessor from whom it was:

(A) purchased;

(B) leased; or

(C) exchanged;

for the repair of a nonconformity covered by the warranty; and

(2) at least one (1) of the following conditions exists:

(A) The repair period exceeds ten (10) business days, including the day the hearing aid is tendered to the dealer, manufacturer, or lessor, but excluding overnight shipping time and scheduling time for professional fitting and dispensing.

(B) The nonconformity is the same for which the hearing aid has been tendered to the dealer for repair on at least two (2) previous occasions for the same nonconformity.

(b) The manufacturer shall provide directly to the consumer for the duration of a repair period described in subsection (a) either:

(1) a usable hearing aid that is not necessarily new or identical, but is in good working order and relates to the consumer's audiogram; or

(2) a rental reimbursement of not more than twenty dollars (\$20) per day.

If the failure of a dealer or lessor to tender the nonconforming hearing aid to the manufacturer in a timely manner causes the failure of the manufacturer to make the repairs within ten (10) business days after receiving the hearing aid, the dealer or lessor shall reimburse the manufacturer for any penalties that the

1 manufacturer must pay.

2 (c) The manufacturer's duty under this section applies for a
3 period that ends on the expiration date of the manufacturer's
4 express warranty.

5 Sec. 17. (a) This chapter does not limit the rights or remedies
6 that are available to a consumer under any other law.

7 (b) The rights of a consumer under this chapter may not be
8 waived.

9 (c) In addition to pursuing any other remedy, a consumer may
10 bring an action to recover damages caused by a violation of this
11 chapter. The court shall award a consumer who prevails in an
12 action under this section:

13 (1) not more than the amount of any pecuniary loss, plus
14 costs, disbursements, and reasonable attorney's fees; and

15 (2) equitable relief that the court determines is appropriate.

16 Sec. 18. This chapter does not apply to hearing aids purchased,
17 leased, or transferred to a consumer before July 1, 1999."

(Reference is to HB 1152 as printed February 3, 1999.)

Representative Goeglein